England and there administered. Clearly on that ground, the *corpus* being within the jurisdiction of the English law, that law alone could give effect to any dealings with it. It is to be regretted that the court did not take this opportunity to enunciate the principles of law governing this interesting class of cases.

LIABILITY FOR NEGLIGENT INJURY RESULTING IN SUICIDE. — The development of the modern law of negligence has given rise to many interesting decisions. A late Massachusetts case furnishes an example of this class. The plaintiff's testator committed suicide while suffering from insanity induced by an injury which the defendant had negligently inflicted. The disease had destroyed the power of the deceased to discriminate between right and wrong, but he was still able to know what he wished to do, and to act towards that end. The court, following Scheffer *v.* Washington, etc., R. R. Co.,[1] where the facts seem identical, held that the defendant was not liable for the testator's death, since it was caused by the testator's own act and not by the defendant's negligence. *Daniels* v. *New York, etc., R. R. Co.*, 67 N. E. Rep. 424 (Mass.).

There should be no difficulty in sustaining the plaintiff's suit on grounds of legal cause. A man is liable for the probable results of his negligence.[2] Insanity would seem sufficiently probable as a result of severe shock and bodily injury; and suicide is such a sufficiently common result of insanity like that in the present case, that it may be justly urged that where the latter is probable, the former is. Nor does the fact that the deceased's death is the immediate result of an act other than the defendant's break causal connection if it is admitted to be a probable result.[3] But if it can be shown that the deceased was himself at fault, then, although the defendant's negligence caused his death, the plaintiff cannot recover.[4] It would seem, then, that the decision of the principal case must rest upon the ground that the plaintiff was at fault when he killed himself.

It is difficult, however, to show any fault on the part of the deceased. A man is generally responsible for his acts, that is, for those things which he chooses to do. But where a man whose mind is so crippled by loss of moral judgment that he cannot distinguish between right and wrong chooses that which in his normal state he never would have chosen, it is unjust to hold him responsible, in the sense that he is at fault, merely because a normal man would have been at fault had he so chosen. This is supported by the criminal decisions, which make knowledge of right and wrong the test of fault.[5]

This reasoning may seem at variance with the rule that an insane person is liable for his torts,[6] for it might seem to follow from that rule that an insane person in doing intentional damage is always at fault. But the cases which established that rule went upon the theory that he who is damaged ought to be recompensed.[7] An insane defendant was held liable, though

---

1 105 U. S. 249.
2 Milwaukee, etc., R. R. Co. *v.* Kellogg, 94 U. S. 469.
3 Lane *v.* Atlantic Works, 111 Mass. 136.
4 Locker *v.* Damon, 17 Pick. (Mass.) 284; Nashua, etc., Co. *v.* Worcester, etc., R. R. Co., 62 N. H. 159.
5 United States *v.* Young, 25 Fed. Rep. 710.
6 McIntyre *v.* Sholty, 121 Ill. 660.
7 Holmes on Com. Law, 84.

the mere instrument of damage, because there was no better person to hold. Therefore these cases furnish no inference of fault to controvert the argument of the preceding paragraph. Their theory is rather in support of the present plaintiff. Thus, if A causes B to become insane, and B, because of his insanity, damages C, then A is a better person to hold liable than B, since B is the mere instrument, while A is at fault. In the principal case the defendant is A, and the plaintiff stands in the position of both B and C, for the testator was used as an instrument to damage himself. It does not seem just to make the testator's bare instrumentality a bar to the action, and the plaintiff should therefore recover.

GRATUITOUS UNDERTAKINGS. — In personal actions the duty which is violated is generally one of two kinds. It may be one imposed upon the defendant in common with all the world, independently of any act or volition on part of the defendant, or it may be one which arises entirely from the defendant's promise, given formally or for good consideration. There is, however, in addition to these, at least one other way in which a legal duty may arise, that is, from a gratuitous undertaking by the defendant. Here it is a duty which the defendant without consideration has assumed voluntarily. It arises from some peculiar relation to the plaintiff, into which the defendant has entered.

The great bulk of these so-called "gratuitous undertakings" consists of the ordinary transactions of mandate. A mandate is defined as a consensual contract by which one party confides any transaction to another, who undertakes to perform it gratuitously.[1] A railroad, for instance, is held liable to a passenger whose contract was with a different road,[2] or who was being carried free under a misstatement as to his age,[3] or who had a pass as a stockholder.[4] This liability is imposed by law upon any one voluntarily assuming the relation of carrier to passenger. It is larger than the coexistent duty owed by the defendant to all the world, since it includes, for example, responsibility for the independent acts of servants,[5] or for hidden defects. An analogous instance of the same sort of liability is that owed to invited guests, where again the strict liability of the landlord depends upon his voluntary undertaking.

The most important class of cases dependent upon a gratuitous undertaking is probably that of gratuitous bailments. Formerly the courts attempted to construe a gratuitous bailment as a binding contract,[6] but lack of consideration makes that explanation untenable. In the case of a finder who picks up goods intending to return them to the owner, there is the additional objection of an absence of mutual assent.[7] In both these cases the bailee is liable to the bailor, and in both of them his duty arises from the relation into which he has voluntarily entered, not from a contract nor from

---

[1] Williams *v.* Conger, 125 U. S. 422.
[2] Foulkes *v.* Met. District Ry. Co., 5 C. P. D. 157.
[3] Marshall *v.* Y. N. & B. Ry. Co., 11 C. B. 655.
[4] Phil. & Read. R. R. Co. *v.* Derby, 14 How. (U. S.) 468. *Cf.* Austin *v.* Great Western Ry. Co., L. R. 2 Q. B. 442.
[5] Croker *v.* Chicago, etc., Ry. Co., 36 Wis. 657; Putnam *v.* Broadway, etc., R. R. Co., 55 N. Y. 108.
[6] Riches *v.* Briggs, Yelv. 4; Hart *v.* Miles, 4 C. B. N. S. 371.
[7] Smith *v.* Nashua, etc., R. Co., 27 N. H. 86.